UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,123	03/15/2001	Victor Marcus Lewis	14219	2983

7590 03/01/2005

Scully Scott Murphy & Presser
400 Garden City Plaza
Garden City, NY 11530

EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/744,123	LEWIS ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 February 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 12-17* is/are rejected.

7)☒ Claim(s) *11 and 18* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5-10, 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rahman (3,950,560) or Rahman '026 or Rahman '560 in view of Rahman '026.

Rahman et al. '560 and '026 disclose first drying a vegetable such as green peas or beans to from 7-18% than compressing the vegetable and then redrying the compacted vegetable to a moisture content of less than 5% (abstracts). The vegetable product is considered to rehydrate as claimed since the composition is the same.

Claims 1, 2 and 5, 6, 8 differ from the reference in that the vegetable piece is compressed to about 0.2 to 2.5 mm and in the temperature at which the vegetables are rehydrated. Rahman et al. '560 disclose a compression of from 1/8 to ½ inch thickness. It would have been within the skill of the ordinary worker to press to a particular size particularly as Rahman discloses almost the claimed size at the higher end of the range. No patentable distinction is seen at this time in 1/8 inch and 2.5 mm at this time absent a showing that a difference in the size would make for a patentably distinct product.

It is noted that 100 C as claimed is a boiling temperature and Rahman '560 rehydrates at this temperature. Even though the claim does not require further boiling as in the reference it is seen that the degree of cooling a vegetable is dependent on

which vegetable is being treated, its size and degree of dehydration. Also, it is not known to what degree of rehydration would result from a vegetable being placed in 100 C water for up to 5 minutes as to what is considered to be an acceptable product can vary and nothing has been shown that dehydrating the vegetables of Rahman '560 as claimed would not produce the same degree of rehydration and edible tenderness and texture. Therefore, it would have been obvious to make a composition as claimed as shown by Rahman '560 and '026.

Claim 3 requires added solutes. Rahman et al. '026 disclose the addition of sodium bisulfite (abstract). Therefore, it would have been obvious to add solutes as disclosed by Rahman et al. '026 in the composition of Rahman et al. '560.

Claim 7 further requires dehydrating the vegetable to from 8 to 20%. However, it would have been within the skill of the ordinary worker to dehydrate to any degree which would still allow the vegetables to have been preserved as it is known to dehydrate down to 5% as shown by Rahman '560, it would be obvious to dehydrate to a little more depending on the degree of dryness required.

Claim 9 is to the process of making a dehydrated vegetable product by dehydrating vegetable pieces from 7-18%, compressing the vegetable, and then further redrying or dehydrating the vegetable to 5% (abstract and col. 3, lines 39-70, col. 4, lines 15-55). Rehydration of the vegetable piece is disclosed in col. 5, lines 10-19. Claims 9, 13, and 14 differ from the reference in the step of rehydrating the vegetable piece at 90 to 100 C. However, as the process has been shown and the degrees of drying are within the claimed ranges, the product could also be rehydrated at the

claimed range and would have given the claimed product as the process has been shown and to compress the vegetables at with the claimed ranges as shown by Rahman et al. '560.

Claim 9 differs from the reference in that the vegetable piece is compressed to about 0.2 to 2.5 mm and in the temperature at which the vegetables are rehydrated. Rahman et al. '560 disclose a compression of from 1/8 to ½ inch thickness. It would have been within the skill of the ordinary worker to press to a particular size, particularly as Rahman discloses almost the claimed size at the higher end of the range. No patentable distinction is seen at this time in 1/8 inch and 2.5 mm at this time absent a showing that a difference in the size would make for a patentably distinct product.

The claim further requires rehydrating at temperatures of from 90 to 100 C without further application of heat instantly or within 5 minutes. It is noted that 100 C as claimed is a boiling temperature and Rahman '560 rehydrates at this temperature (col. 6, lines 35-44). However, the time of rehydration is dependent on the type of vegetable and the degree of dehydration, and the temperatures of dehydration. As the process has been shown, the vegetables would have rehydrated to the degree claimed under the claimed process, even though the references discloses boiling at longer times and allowing the product to further rehydrate, possibly gives a more cooked product than desired currently. Therefore, it would have been obvious to compress to a particular size and to rehydrate as claimed to give a particular type of product.

The limitations of claims 10, 12-14 have been discussed above and are obvious for those reasons.

Claims 15 and 16 further require a particular apparatus with a particular gap. However, the particular apparatus is not given weight in a composition claim. The reference to Rahman '560 discloses compressing to close to the higher amount claim as above. Therefore, it would have been obvious to press as disclosed by Rahman 560 absent a showing that a different product is made by 2 or 3 mm difference.

Claims 4 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rahman '560 and Rahman 026 as applied to the above claims and further in view of Lewis et al. 4,447,460 and Birdseye (2,509,719).

Claim 4 requires particular solutes. Lewis et al. '460 disclose adding salt, and sugars to a partially dehydrated vegetable, which is further dehydrated. Birdseye discloses that a dehydrated vegetable can be compressed easier if it has been treated with plasticizing ingredients such as sugar (col. 4, lines 32-54 and lines 55-75, col. 5, lines 1-7). Therefore, it would have been obvious to use the claimed solutes as disclosed by Lewis and Birdseye in the compressed product of Rahman '560 and 026 in order to make compression of the vegetables easier.

The particular amount of solutes as disclosed in claim 17 is seen to have been within the skill of the ordinary worker given that it is known to add solutes to the composition as above. Therefore, it would have been obvious to use particular amounts of solutes in the claimed process.

Allowable Subject Matter

Claims 11 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

ARGUMENTS

Applicant's arguments with respect to claims 1-10-, 12-17 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 2-26-05

H. Pratt

HELEN PRATT
PRIMARY EXAMINER